

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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In re:	:	
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THE FINANCIAL OVERSIGHT AND	:	PROMESA
MANAGEMENT BOARD FOR PUERTO RICO,	:	Title III
	:	
as representative of	:	Case No. 17-BK-3283 (LTS)
	:	
THE COMMONWEALTH OF PUERTO RICO <i>et al.</i> ,	:	(Jointly Administered)
	:	
Debtors. <sup>1</sup>	:	
	X	

**RESPONSE AND LIMITED OBJECTION OF OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS TO THE URGENT MOTION OF THE LAWFUL  
CONSTITUTIONAL DEBT COALITION TO FILE UNDER SEAL CERTAIN  
PORTIONS OF ITS OBJECTION TO THE MOTION OF NATIONAL PUBLIC  
FINANCE GUARANTEE CORPORATION  
FOR ENTRY OF AN ORDER DIRECTING AN INDEPENDENT INVESTIGATION**

To the Honorable United States District Judge Laura Taylor Swain:

The Official Committee of Unsecured Creditors of all Title III Debtors (other than COFINA and PBA) (the “Committee”) respectfully submits this *Response and Limited Objection Of Official Committee Of Unsecured Creditors To The Urgent Motion Of The Lawful Constitutional Debt Coalition To File Under Seal Certain Portions Of Its Objection To The Motion*

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<sup>1</sup> The Debtors in these Title III cases, along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523 (LTS)) (Last Four Digits of Federal Tax ID: 3801).

*Of National Public Finance Guarantee Corporation For Entry Of An Order Directing An Independent Investigation* and states as follows:

1. The Committee agrees with LCDC<sup>2</sup> that the public interest would be served by the unsealing of the Confidential Exhibit. The Committee further submits that all information in the Objection, including the information identified as “Mediation Privilege”,<sup>3</sup> should be unsealed and publicly available if it is to be considered by the Court and objects to retaining any portion of the Objection under seal.

2. The nature of the Objection, which addresses allegations of improper trading in publicly-traded securities, underscores the fact that “democratic values are best served by a transparent judicial system, [and] the courts have long recognized ‘a presumption that the public has a common-law right of access to judicial documents,’ including documents ‘which properly come before [a] court in the course of an adjudicatory proceeding and which are relevant to that adjudication.’” *Bourne v. Town of Madison*, CIV. 05-CV-365-JD, 2007 WL 1796239, at \*1 (D.N.H. June 19, 2007)(citing and quoting *In re Providence Journal Co.*, 293 F.3d 1, 9 (1st Cir.2002) (internal quotation marks omitted)).

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<sup>2</sup> All capitalized terms used but not defined herein have the meanings ascribed to such terms in the Procedures Motion.

<sup>3</sup> The LCDC seeks to retain certain information in its Objection sealed based on “Mediation Privilege”. See FN 2 of the Objection. To the extent that any federal mediation privilege even exists in the First Circuit, LCDC has waived any privilege by electing to place the information “at issue”. See *John Doe Co. v. United States*, 350 F.3d 299, 302 (2d Cir. 2003), *as amended* (Nov. 25, 2003)(“It is well established doctrine that in certain circumstances a party's assertion of factual claims can, out of considerations of fairness to the party's adversary, result in the involuntary forfeiture of privileges for matters pertinent to the claims asserted. The loss of the privilege in these circumstances is sometimes described as . . . as “*at issue*” *waiver* because it results from the party having placed a contention at issue . . .” (internal citations omitted)).

**WHEREFORE**, the Committee respectfully requests that the Court enter an order unsealing the Objection and Confidential Exhibit in its entirety, if it is to be considered by the Court, and granting such other relief that is just and proper.

Dated: October 21, 2020

**Respectfully Submitted,**

/s/ John Arrastia

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- and -

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*Local Counsel to Official Committee of  
Unsecured Creditors for all Title III Debtors  
(other than COFINA and PBA)*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing was served via CM/ECF Notification upon all interested parties registered to receive electronic notification (which is incorporated herein by reference) on this 21<sup>st</sup> day of October, 2020.

By: John Arrastia  
John Arrastia